

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN SENATE MARCH 13, 2006

SENATE BILL

No. 1272

**Introduced by Senator Bowen
(Principal coauthor: Senator Alquist)**

February 9, 2006

An act to amend ~~Section 4800~~ *Sections 4717, 4800, and 4803* of the Probate Code, relating to advance health care directives.

LEGISLATIVE COUNSEL'S DIGEST

SB 1272, as amended, Bowen. Advance health care directives.

(1) Existing law establishes the Advance Health Care Directive Registry allowing individuals to register a written advance health care directive with the Secretary of State. The information in the registry is accessible by specified entities, upon request.

This bill would require the Secretary of State, on or before January 1, 2008, to establish an ~~Internet~~ *Advance Health Care Directive Web* site that would permit an individual to register with the registry online, *as specified*, and would permit ~~specified entities~~ *a health care provider* to request information from the registry online. The bill would require the Secretary of State to establish the Web site by using existing resources. The bill would also require that the Advance Health Care Directive Registry Internet Web site and "Donate Life," the California Organ and Tissue Donor Registry Internet Web site, each have a direct link on its home page to the other's Internet Web site. *The bill would make conforming changes in that regard to a related provision, and would modify provisions relating to the information that Secretary of State may receive from a registrant to exclude a social security number or driver's license number.*

(2) *Existing law provides that failure to register an advance health care directive does not affect the validity of that directive.*

This bill would further provide that the registration of an advance health care directive with the Secretary of State does not affect the validity or certify the accuracy of that directive, or create a presumption of validity or accuracy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4717 of the Probate Code is amended to
2 read:

3 4717. (a) Notwithstanding any other provision of law, within
4 24 hours of the arrival in the emergency department of a general
5 acute care hospital of a patient who is unconscious or otherwise
6 incapable of communication, the hospital shall make reasonable
7 efforts to contact the patient's agent, surrogate, or a family
8 member or other person the hospital reasonably believes has the
9 authority to make health care decisions on behalf of the patient.
10 A hospital shall be deemed to have made reasonable efforts, and
11 to have discharged its duty under this section, if it does all of the
12 following:

13 (1) Examines the personal effects, if any, accompanying the
14 patient and any medical records regarding the patient in its
15 possession, and reviews any verbal or written report made by
16 emergency medical technicians or the police, to identify the
17 name of any agent, surrogate, or a family member or other person
18 the hospital reasonably believes has the authority to make health
19 care decisions on behalf of the patient.

20 (2) Contacts or attempts to contact any agent, surrogate, or a
21 family member or other person the hospital reasonably believes
22 has the authority to make health care decisions on behalf of the
23 patient, as identified in paragraph (1).

24 (3) Contacts the Secretary of State directly or indirectly,
25 including by voice mail~~—or~~, facsimile, *or via the Internet*, to
26 inquire whether the patient has registered an advance health care
27 directive with the Advance Health Care Directive Registry, if the
28 hospital finds evidence of the patient's Advance Health Care

1 Directive Registry identification card either from the patient or
2 from the patient's family or authorized agent.

3 (b) The hospital shall document in the patient's medical record
4 all efforts made to contact any agent, surrogate, or a family
5 member or other person the hospital reasonably believes has the
6 authority to make health care decisions on behalf of the patient.

7 (c) Application of this section shall be suspended during any
8 period in which the hospital implements its disaster and mass
9 casualty program, or its fire and internal disaster program.

10 ~~SECTION 1.~~

11 *SEC. 2.* Section 4800 of the Probate Code is amended to read:

12 4800. (a) The Secretary of State shall establish a registry
13 system through which a person who has executed a written
14 advance health care directive may register in a central
15 information center, information regarding the advance *health*
16 *care* directive, ~~making~~ *and a copy of the advance health care*
17 *directive. The Secretary of State shall make that information*
18 *available upon request to any health care provider, the public*
19 *guardian, or the legal representative of the registrant, but shall*
20 *otherwise keep the information confidential.* A request for
21 information pursuant to this section shall state the need for the
22 information.

23 (b) The Secretary of State shall respond by the close of
24 business on the next business day to a request for information
25 made pursuant to Section 4717 by the emergency department of
26 a general acute care hospital.

27 (c) Information that the Secretary of State may receive is
28 limited to the registrant's name, ~~social security number, driver's~~
29 ~~license number, or~~ other individual identifying number
30 established by law, *excluding a social security number or*
31 *driver's license number*, if any, address, date and place of birth,
32 the registrant's advance health care directive, an intended place
33 of deposit or safekeeping of a written advance health care
34 directive, and the name and telephone number of the agent and
35 any alternative agent. Information that may be released upon
36 request may not include the registrant's social security number
37 ~~except when necessary to verify the identity of the registrant. or~~
38 *driver's license number.*

39 (d) On or before January 1, 2008, the Secretary of State shall
40 establish an ~~Internet~~ *Advance Health Care Directive* Web site

1 that allows an individual to register with the registry online. The
2 Secretary of State shall establish the Web site by using existing
3 resources. The Web site shall ~~also~~ permit a health care provider,
4 ~~the public guardian, or the legal representative of a registrant or~~
5 ~~the~~ including an emergency department of a general acute care
6 hospital ~~to request information from,~~ to access the registry online
7 ~~pursuant to subdivision (a) or (b) as provided in this subdivision.~~

8 The Advance Health Care Directive Registry Internet Web site
9 shall have a direct link to “Donate Life,” the California Organ
10 and Tissue Donor Registry Web site, on its home page. In
11 addition, “Donate Life,” the California Organ and Tissue Donor
12 Registry Internet Web site shall have a direct link to the Advance
13 Health Care Directive Registry Internet Web site.

14 *(1) The Secretary of State shall provide all of the following to*
15 *individuals who wish to register using the Web site:*

16 *(A) A secure Web site, which is accessible from a link on the*
17 *Secretary of State’s homepage.*

18 *(B) An electronic registration form and an electronic advance*
19 *health care directive form, which can be filled out online,*
20 *submitted to the registry via the Web site, and that allows the*
21 *user to print out a completed form. The form shall include a*
22 *space for the person to indicate whether the form is being*
23 *submitted as a new registration, an amendment to a prior*
24 *registration, or a revocation of a prior registration. Failure to*
25 *notify the Secretary of State of an amendment or revocation of an*
26 *advance health care directive does not affect the validity of an*
27 *amendment or revocation that is otherwise legally valid. A*
28 *person submitting an advance health care directive shall ensure*
29 *that any amendment or revocation of the directive is submitted*
30 *promptly to the Secretary of State. A health care provider shall*
31 *not be held liable for relying on a directive that has not been*
32 *updated or has been revoked.*

33 *(C) Instructions to the individual that all forms submitted*
34 *electronically must be printed, signed and dated, and submitted*
35 *to the Secretary of State by mail. The instructions shall also*
36 *explain that, pursuant to Section 4673, an advance health care*
37 *directive must also be witnessed by two individuals or notarized.*
38 *The instructions shall advise the individual to keep a copy of the*
39 *completed advance health care directive and to share it with*

1 family members, health care providers, and legal
2 representatives, as the individual deems appropriate.

3 (2) Upon receipt of a form submitted via the Web site, the
4 Secretary of State shall create an electronic file in the registry
5 containing the information submitted and assign a unique file
6 number.

7 (3) Upon receipt of a form submitted in writing, the Secretary
8 of State shall do both of the following:

9 (A) Match the document with any existing file containing
10 information submitted by the individual via the Web site. If the
11 individual has not submitted a form via the Web site, create an
12 electronic file and assign a unique file number.

13 (B) Create a digital image of the form and deposit the image
14 into the individual's electronic file in the registry. The Secretary
15 of State is not required to review an advance health care
16 directive to determine whether it is legally valid.

17 (4) The Secretary of State shall establish confidential online
18 access to the registry for health care providers according to all
19 of the following requirements:

20 (A) The Secretary of State shall establish a separate and
21 secure nonpublic Web site for the purpose of health care
22 provider access.

23 (B) A health care provider shall apply to the Secretary of State
24 for confidential online access to the registry.

25 (C) The Secretary of State shall provide a health care provider
26 who applies for confidential online access to the registry a
27 secure user identification number, a password, and the Web site
28 address (URL) to be used for health care provider access.

29 (D) A health care provider may only be allowed online access
30 to the registry using its user identification number and password.

31 (E) A health care provider may access a patient's advanced
32 health care directive information by entering the file number on
33 the patient's Advance Health Care Directive Registry
34 identification card or by entering the patient's name and date of
35 birth on the health care provider access Web site.

36 (e) Upon receiving information from a registrant, the Secretary
37 of State shall issue to the registrant an Advance Health Care
38 Directive Registry identification card indicating the individual's
39 file number in the registry and that an advance health care
40 directive, or information regarding an advance health care

1 directive, has been deposited with the registry. Costs associated
2 with issuance of the card shall be offset by the fee charged by the
3 Secretary of State to receive and register information at the
4 registry.

5 (f) The Secretary of State, at the request of the registrant or his
6 or her legal representative, shall transmit the information
7 received regarding the written advance health care directive to
8 the registry system of another jurisdiction as identified by the
9 registrant, or his or her legal representative.

10 (g) The Secretary of State shall charge a fee to each registrant
11 in an amount such that, when all fees charged to registrants are
12 aggregated, the aggregated fees do not exceed the actual cost of
13 establishing and maintaining the registry.

14 (h) *The Secretary of State shall use the information contained*
15 *in the registry only for the purposes of the registry.*

16 SEC. 3. *Section 4803 of the Probate Code is amended to*
17 *read:*

18 4803. (a) Failure to register with the Secretary of State does
19 not affect the validity of any advance health care directive.

20 (b) *Registration with the Secretary of State does not do any of*
21 *the following:*

22 (1) *Affect the validity of any advance health care directive.*

23 (2) *Certify the accuracy of information contained in the*
24 *advance health care directive.*

25 (3) *Create a presumption regarding the validity of the advance*
26 *health care directive or the accuracy of information contained in*
27 *the advance health care directive.*